

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 20 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ARTHUR RAY DEERE Sr.,

No. 21-15937

Plaintiff-Appellant,

D.C. No. 2:16-cv-01694-MCE-DB

v.

CDC EMPLOYEES; PRISON LAW  
OFFICE; JOE A. LIZARRAGA, Warden,

MEMORANDUM\*

Defendants-Appellees.

Appeal from the United States District Court  
for the Eastern District of California  
Morrison C. England Jr., District Judge, Presiding

Submitted March 14, 2023\*\*

Before: SILVERMAN, SUNG, and SANCHEZ, Circuit Judges.

California state prisoner Arthur Ray Deere Sr. appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his safety. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

affirm.

The district court properly granted summary judgment because Deere failed to raise a genuine dispute of material fact as to whether defendant Lizarraga was deliberately indifferent to his safety. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (a prison official is deliberately indifferent only if he or she “knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he [or she] must also draw the inference”).

The district court did not abuse its discretion in denying Deere’s motion to appoint counsel because Deere did not demonstrate exceptional circumstances. *See Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (setting forth standard of review and “exceptional circumstances” requirement).

We reject as meritless Deere’s contention that the magistrate judge should have recused herself.

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

All pending motions and requests are denied.

**AFFIRMED.**